

REMARKS

Claims 1-3, 6-12, and 15-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Pat. 3,582,356.

The instant application claims structure that is not found in the Thomas reference US Pat. 3,582,356 (hereinafter “Thomas”).

By way of background, the invention discloses a skewer (10) having a first end (12) and a second end (14) with two skewer gripping devices (20) mounted on the skewer. Each skewer gripping device (20) includes a substantially hexagonal plate (22) which has an outer periphery in the form of an outer edge (28). Each hexagonal plate (22) has a food engaging surface. Food is threaded along the skewer with additional food items being packed against additional food items until a sufficient clamping force is distributed along the foodstuffs between the opposed food engaging surfaces.

The outer periphery (28) of the gripping devices extends about the skewer (10). The outer peripheries (28) of the gripping devices (2) rests on a surface displacing the skewer (10) from the resting surface by a minimum distance. The hexagonal peripheries provide multiple stable angular orientations for the skewer (10).

The cooking device in Thomas discloses a rotisserie spit (10) for mounting above an oven unit (11). The spit (10) has a square shaft which carries a plurality of hamburger patties and a plurality of metal conductor plates. End plates (25) are used at the end of a cartridge containing hamburger patties and conductor plates. The end plates may be tightened on the spit (10) to clamp the conductor plates and intervening plates together by means of the thumb screws provided in the boss of each end plate. Food in the form of hamburger patties is engaged in between the conductor plates. The rotisserie spit (10) is

supported by a side plate (15). The side plate (15) holds the two ends of the rotisserie above the heat source. The side plate (15) has no contact with the hamburger patties and are separate from the food engaging surface.

The conductor plates are primarily responsible for evenly distributing heat received from beneath the rotisserie to the conductor plates to the surface area of the hamburger patties. The surface area of the conductor plates and the hamburger patties is perpendicular to the lengthwise direction of the spit.

New claim 21 which includes the subject matter or claim 1 recites, inter alia, that:

a pair of plates for receiving said skewer;

said front and said rear surfaces of each of said plates terminating in an outer periphery;

said outer periphery of said plate includes planar edge surfaces equally spaced apart a distance from said central portion of said plate;

one of said planar edge surfaces of said outer periphery of each of said plates engaging said heated surface providing a stable angular orientation of each of said plates, said gripping means and said skewer with respect to said heated surface; and, said skewer residing spaced apart from and supported above said heated surface.

Thomas lacks all of the italicized claimed elements and limitations recited above. Figs. 2 to 5 do not teach or suggest any planar edges surfaces of the plates to provide a stable orientation of the skewer relative to the heated surface. In fact Thomas is just the opposite, it is a rotisserie. The portion of the Thomas specification, col. 2, lns. 57-67, speaks in terms of clamping but is silent as to providing a stable angular orientation of the

skewer device. Thomas, as understood has a side plate with notches in it to raise and lower the skewer of Thomas. Thomas' structure is totally different than the claimed invention as set forth in claim 21.

The Thomas reference employs a plate not part of the structure as a side plate structure used to hold the rotisserie spit and the end plates above the heat source. The conductor plates and end plates 25 of Thomas do not engage a heated surface in Thomas. The curved end plates 25 of Thomas are freely suspended in the air. In fact if you were to put the curved end plates of Thomas on the heated surface they would roll off. Thomas as indicated in drawing Figures 1-5 thereof is a rotisserie driven at one end thereof. Claim 21 recites a gripping device that in fact prevents rotation of the device.

In regard to claim 21, the claim recites a skewer. Thomas discloses a rotisserie spit. A rotisserie spit is for use in rotating about a heat source. A skewer is for engaging and receiving foodstuffs and placement in one position about a heat source without constant rotation. See page 4, line 20 et. seq. of the specification of the instant application where foods can be threaded along the skewer and can be packed against subsequent foodstuffs. The skewer can be used individually and can be applied directly in proximity to a variety of different heat sources and is able to receive a variety of foodstuffs by insertion.

The rotisserie spit in Thomas is not a skewer. The rotisserie spit is designed to receiving a cartridge of hamburger patties and conductor plates. Further, the square shape of the shaft is for use in a square shaped bushing socket (35). The spit is a not skewer and lacks the structure for insertion or threading additional foodstuffs or cooking independent of a rotisserie device or oven. See Thomas Col. 3, lines 47-56. Claim 21 is believed to be

allowable.

Anticipation requires that there be an identity of invention. Anticipation requires that all elements and limitations of the claim are found within a single prior art reference. There must be no difference between the claimed invention and the reference disclosure. *Carella v. Starlight Archery and ProLine Co.*, 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed. Cir. 1986). *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1549, 220 USPQ 193, 198 (Fed. Cir. 1983). *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 781 (Fed. Cir. 1983).

Applicant believes that a proper case of anticipation has not been made and claim 21 is clearly allowable. Reconsideration of claim 21 is respectfully requested.

In regard to Claim 2 it is believed to be allowable for its dependence on claim 21 which is allowable.

Claim 11 has been amended to recite that the outer periphery of the first gripping device includes planar edge surfaces equally spaced apart a distance from the central portion of the gripping device. Additionally, claim 11 has been amended to recite foodstuffs which extend continuously between one skewer gripping device to a second skewer gripping device. Thomas lacks this structure as the foodstuffs have conductor plates interspersed between the end plates. The foodstuffs in the reference do not extend continuously from one food engaging surface to the next. The conductor plates which are located in the positions in between the gripping devices divide the food from the respective food engaging surfaces. Claim 11 is believed to be allowable.

Claim 12 is believed to be allowable for at least the reason stated above that claim 11 is allowable.

Claims 15-17 are believed to allowable for their dependence on claim 21 either

directly or indirectly which is allowable.

Claims 4, 5, 13, 14, 19, and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over US '356.

Claim 4, as amended, of the instant application recites a plate that is polygonal in shape. Claim 4 is dependent on claim 2 which is dependent on claim 21. Claim 21 recites that the outer periphery of the plate includes planar edge surfaces equally spaced apart a distance from the central portion of the plate. This results in the food stuffs elevated or spaced apart from the heated surface. Thomas completely lacks this structure. Additionally, in the instant application, it is stressed that the edge surfaces provide a stable angular orientation for the skewer for providing even cooking of the foodstuffs on the skewer are disclosed. On page 5, line 21 et seq., the instant application discloses the spacing from the hot surface provided by the outer periphery of the skewer gripping device allowing the foodstuffs to be heated by convection and radiation. The foodstuffs are threaded along the skewer and have a surface area parallel to the lengthwise direction of the skewer to receive heat from a hot surface.

Applicant disagrees with the Examiner that it would have obvious to form a polygonal and/or hexagonal plate to prevent rolling of the device. Applicant disagrees with this finding for several reasons.

Thomas lacks the claimed outer periphery of the plates of a skewer gripping device engaging a heated surface.

First of all this device has a completely different structure and lacks significant structure. As discussed previously the cooking device of Thomas lacks any outer periphery which is in direct contact with a heated surface. The plates 15 of Thomas are

part of the framework of the machine that receives the rotisserie and these plates are support means for the rotisserie and they have no contact with a heated surface. The end plates 25 of Thomas are suspended in the air and freely rotate. As a result, there would be no reason to change their shape to prevent rolling.

In, *In re Kotzab*, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000), the court held that a “finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the claimed invention] to make the combination in the manner claimed” must be made. In the instant application, the Examiner has not identified a specific understanding or principle within the knowledge of the skilled artisan that would have motivated one with no knowledge of the claimed invention to make the combination in the manner claimed.

Secondly, the reference utilizes a completely different approach to solve a different problem from the instant invention. The cooking device in Thomas teaches cooking hamburger patties uniformly through direct contact of hamburger patties with conductor plates. The conductor plates are taught to be highly conductive, so that the heating is spread evenly toward the center of the plates. The orientation of the surface area of the foodstuffs is primarily perpendicular to the rotisserie spit and there is very little surface area of the foodstuffs (in this invention hamburger patties) for cooking by convection or radiation. As a result, there would be no reason to modify this device to rest on a surface, as the foodstuffs have an exposed surface area which is too small given the cylindrical cartridge, to cook thoroughly by radiation or convection.

MPEP section 2143.01 indicates that one of the more frequently used tests applied by the Patent Office to determine obviousness is the teaching, suggestion or motivation

test. Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. In re Kahn, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) There is no basis for modifying the Thomas reference and arriving at the claimed structure because the reference and the claimed invention address totally different unrelated approaches to cooking.

Thirdly, Thomas explicitly teaches away from the polygonal shape of the outer periphery in the instant invention. In col. 4, lines 6-9, Thomas states: "It will be appreciated that for most economical operation, the conductor plates are circular in shape to conform generally to the patty configuration." This invention provides a cooking device designed primarily for the cooking of hamburger patties by even conduction of heat in contact with a heated surface area. Thomas '356 states in col. 3, lines 27-30, "The patties 22, preferably in the disc-like form, are built up into a substantially cylindrical cartridge 19." In order to optimize, the cooking surface area, both the hamburger patties would have corresponding circular shapes. As a result, the Thomas reference does not provide any reason to have end plates or conductor plates with a polygonal shape. The reference explicitly teaches away from having any outer periphery with any edges other than circular.

It must be remembered that a person of ordinary skill in the art is a person that would not innovate. A person of ordinary skill in the art is one who thinks along the line of conventional wisdom and does not innovate. *Standard Oil Co. v. American Cyanamid Co.*, 774 F.2d 448, 454, 227 USPQ 293 (Fed. Cir. 1985).

In regard to claim 4, applicant believes that a proper prima facie case of

obviousness has not been made. Claim 4 is believed to be allowable.

Claim 5 is allowable also for its dependence on claim 4 and its indirect dependence on new claim 21 which are both allowable.

Claims 19 and 20 are allowable at least for the reason of their dependence on allowable claims.

General remarks applicable to all rejections (Section 102(b) and Section 103)

The present invention is individual and manually used and is arranged to be in contact directly with the heat source. The invention is suitable for any skewer which may be made of metal, bamboo or any other suitable material. The arrangement of Thomas is a complete unit in the form of a mechanical rotisserie. Further, the end plates are no different than a conventional rotisserie. The present invention is a barbeque skewer gripping device (not a rotisserie). The present invention was devised to reduce problems associated with cooking barbequed skewered meat only. Further, the fact that the plates used in the present invention are preferably hexagonal enables the meat to be cooked in six positions by manual repositioning. The meat is not constantly rotated by means of a motor as in the prior art.

Both inventions serve a totally different purpose. The hamburger patties 22 are interdigitated with metal conductor plates 23. Thus, for example, in the embodiment shown there are, apart from the end plates 25, some eighteen conductor plates 23 to retain the patties 22 in place. By way of distinction in the present invention there are simply two end plates and no intermediate plates for separating the meat. It is disclosed that a plurality of pieces of meat can be placed together on the skewer and mounted in contact with one another between the end plates. Thus, there are no intermediate

plates at all. It is respectfully suggested that the Examiner's dismissal of the polygonal nature of the end plates is incorrect in that this feature is quite significant and enables the meat to be cooked in a beneficial way without resorting to the complication and expense of the rotisserie disclosed in the cited prior art.

Summary

Please cancel claims 1, 3, 9, 10, 13, 14 and 18. Please add new claim 21. The subject matter of claim 1 has been incorporated into new claim 21. No new matter is included. A claim listing follows. A petition for extension of time is being submitted herewith. Consideration and/or reconsideration of claims 2, 4-8 and 11-12, and 15-21 is respectfully requested.

The undersigned invites a telephone call from the Primary Examiner if it would expedite the processing and examination of the application.

Respectfully Submitted,

Woodling, Krost and Rust

/Kenneth L. Mitchell/

Kenneth L. Mitchell
Patent Attorney, 36,873
Karl Kurple
Patent Agent, 57,440
Registered Professional Engineer
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, Ohio 44094
phone no. (440) 256-4150;
fax no. (440) 256-7453;

email: ken.mitchell@clevepat.com